

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4 OSVALDO GARCIA,

5 Plaintiff,

Case No. 2:18-cv-00595-KJD-VCF

ORDER

6 v.

7 STATE OF NEVADA et al.,

8 Defendants.
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10 This action is a *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983 by
11 a former state prisoner. On March 11, 2019, this Court issued an order denying the
12 application to proceed *in forma pauperis* for prisoners as moot because Plaintiff was no
13 longer incarcerated. (ECF No. 8 at 6). The Court ordered Plaintiff to file a fully complete
14 application to proceed *in forma pauperis* for non-prisoners or pay the full filing fee of
15 \$400.00 within thirty (30) days from the date of that order. (*Id.*) The thirty-day period has
16 now expired, and Plaintiff has not filed an application to proceed *in forma pauperis* for
17 non-prisoners, paid the full filing fee, or otherwise responded to the Court's order.

18 District courts have the inherent power to control their dockets and "[i]n the
19 exercise of that power, they may impose sanctions including, where appropriate . . .
20 dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831
21 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure
22 to prosecute an action, failure to obey a court order, or failure to comply with local rules.
23 See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance
24 with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal
25 for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856
26 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring
27 *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833
28 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order); *Henderson*

1 v. *Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and
2 failure to comply with local rules).

3 In determining whether to dismiss an action for lack of prosecution, failure to obey
4 a court order, or failure to comply with local rules, the court must consider several factors:
5 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to
6 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
7 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
8 *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130;
9 *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

10 In the instant case, the Court finds that the first two factors, the public's interest in
11 expeditiously resolving this litigation and the Court's interest in managing the docket,
12 weigh in favor of dismissal. The third factor, risk of prejudice to Defendants, also weighs
13 in favor of dismissal, since a presumption of injury arises from the occurrence of
14 unreasonable delay in filing a pleading ordered by the court or prosecuting an action. See
15 *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor – public policy
16 favoring disposition of cases on their merits – is greatly outweighed by the factors in favor
17 of dismissal discussed herein. Finally, a court's warning to a party that his failure to obey
18 the court's order will result in dismissal satisfies the "consideration of alternatives"
19 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779
20 F.2d at 1424. The Court's order requiring Plaintiff to file an application to proceed *in forma*
21 *pauperis* for non-prisoners or pay the full filing fee within thirty (30) days expressly stated:
22 "It is further ordered that, if Plaintiff fails to timely file an application to proceed *in forma*
23 *pauperis* for non-prisoners or pay the full filing fee, the Court will dismiss this case with
24 prejudice." (ECF No. 8 at 6). Thus, Plaintiff had adequate warning that dismissal would
25 result from his noncompliance with the Court's order to file an application to proceed *in*
26 *forma pauperis* for non-prisoners or pay the full filing fee within thirty (30) days.

27 It is therefore ordered that this action is dismissed with prejudice based on
28 Plaintiff's failure to file an application to proceed *in forma pauperis* for non-prisoners or

1 pay the full filing fee in compliance with this Court's March 11, 2019, order.

2 It is further ordered that the inmate early mediation conference scheduled for May
3 10, 2019 (ECF No. 11) is vacated.

4 It is further ordered that the Clerk of Court shall close this case and enter judgment
5 accordingly.

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7 DATED THIS 22 day of April 2019.



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UNITED STATES DISTRICT JUDGE